

**Letter of Findings: 01-20110369P
Individual Income Tax
For the Year 2006**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a full-year resident of Illinois. Taxpayer owns shares of an Indiana entity, which was created in June 2005. Taxpayer filed an amended 2006 Indiana individual income tax return and paid additional 2006 Indiana individual income tax in December 2010. The Indiana Department of Revenue ("Department") determined that Taxpayer failed to timely file the tax return. The Department thus assessed Taxpayer interest and a ten percent penalty. While Taxpayer requested abatement of the penalty and interest, the Department denied the request because Taxpayer failed to show reasonable cause for its late filing. Subsequently, Taxpayer paid the interest and protested the penalty. An administrative hearing was conducted and this Letter of Findings results. Further facts will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of negligence penalty. Taxpayer states that it was not a shareholder of the Indiana entity until Taxpayer entered into a settlement agreement establishing such ownership on August 21, 2009. Thus, Taxpayer states that it did not incur Indiana sourced income in the calendar year 2006 and had no obligation to file an Indiana tax return for that year. Taxpayer also asserts that upon the settlement agreement, Taxpayer promptly filed the 2006 amended Indiana return and paid the full amount of income tax and interest. Since Taxpayer states that it acted in good faith and in a timely manner, Taxpayer believes that these factors establish grounds for waiver of the ten percent penalty.

IC § 6-8.1-10-2.1 states in relevant part:

If a person:

...

(1) fails to file a return for any of the listed taxes;

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

...

the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

[45 IAC 15-11-2](#)(b) further provides:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2](#)(c) states in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer did not file a return for 2006 or pay the amount due for 2006 until 2010. The Department determined that this constituted negligence under [45 IAC 15-11-2\(b\)](#), and so imposed a penalty under IC § 6-8.1-10-2.1(a). After review of the documentation and analysis provided in the protest process, Taxpayer has affirmatively established that its failure to file the return and to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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